

**OGS Policy on Permissible Contacts
in accordance with State Finance Law §§139-j and 139-k
(Procurement Lobbying Law)**

Policy Statement

It is the policy of OGS to comply with the provisions of State Finance Law §§139-j and 139-k, commonly referred to as the procurement lobbying law. Both sections of law use defined terms to establish the restrictions on procurement lobbying and it is the policy of OGS that those employees who are involved with procurement contracts shall become familiar with such definitions.

In summary, State Finance Law §§139-j and 139-k require the following actions which shall be undertaken by all OGS staff:

1. An offerer agrees to only make “Permissible Contacts” with respect to a governmental procurement. [See SFL §139-j(3).] The law recognizes two types of “Permissible Contacts.” The first is commonly referred to as a “Designated Contact” and the second is commonly referred to as a “Permissible Subject Matter Communication.” All other Contacts are commonly referred to as “Impermissible Contacts.”

2. “Contact” is a defined term, which means any oral, written or electronic communication with OGS that a reasonable person would infer was intended to influence the governmental entity’s conduct or decision regarding the governmental procurement. For purposes of this document, when this defined term is intended, it will appear as “Contact” with an initial capital letter. It is also noted that not all communications are Contacts (attempts to influence) and the recording requirements only apply to Contacts.

3. **All** Contacts (attempts to influence), whether Permissible Contacts or Impermissible Contacts, shall be recorded and filed in the procurement record. All possibly Impermissible Contacts shall be referred for review and investigation in accordance with the OGS process (see below).

4. State Finance Law §§139-j and 139-k impose these requirements on offerers regarding Contacts (attempts to influence) during the “restricted period.” Generally, a restricted period commences with the first advertisement or other request for information that is intended to result in a procurement contract. It concludes when the procurement contract receives all the necessary approvals. For contracts that are equal to or less than \$85,000 in value, the restricted period concludes when the contract receives all the necessary OGS approvals and is executed by the Offerer. For contracts that exceed \$85,000 in value, the restricted period concludes when the contract is approved for filing by the Office of the State Comptroller. The restricted period for OGS centralized contracts concludes when the contract has received all necessary approvals within OGS.

5. The law requires that OGS designate a specific person or persons to receive Contacts (attempts to influence) from offerers regarding each procurement, referred to as

a “Designated Contact.” Designated Contact information shall be made available to the public as part of the selected procurement methodology. To the extent possible, OGS staff shall refer **all** communications on a specific procurement to the Designated Contact(s).

6. A Designated Contact shall complete a Record of Contact for each communication that constitutes an attempt to influence the procurement contract (Contact). The Record of Contact shall collect the required data elements (see below). After completion, such Record of Contact shall be filed in the OGS procurement record. A Designated Contact shall also refer for review and investigation any Contact that appears to violate the Public Officers Law or the Penal Law in accordance with the OGS process for review and investigation.

7. The law also authorizes an offerer to engage in certain communications with other than the Designated Contact(s), referred to as “Permissible Subject Matter Communications.” If a reasonable person would infer that a communication under this category constitutes an attempt to influence, OGS staff shall complete a Record of Contact and file it in the procurement record. It is important to note that the Permissible Contacts under this category are limited to the specific subject matter. Contacts (attempts to influence) that fall outside of the specific subject matter are deemed to be Impermissible Contacts that must be referred for review and investigation in accordance with the OGS process (see below). The “Permissible Subject Matter Communications” categories are summarized below:

- Submission of a bid, proposal or response for a procurement contract;
- Submission of written questions when written responses are to be provided to all Offerers in accordance with a process set forth in the solicitation;
- Participation in a pre-bid conference provided for in a solicitation;
- Complaints by an Offerer to OGS Legal Services where the OGS Designated Contact for the procurement contract fails to respond in a timely matter;
- Negotiations with the Offerer after a tentative award;
- Debriefings/review of a procurement contract award; and
- Filing of written disputes in administrative hearings, judicial proceedings and to the attorney general, inspector general, district attorney or state comptroller.

OGS staff that is Contacted (attempt to influence) under a Permissible Subject Matter Communication category shall complete a Record of Contact for each communication that constitutes an attempt to influence the procurement contract (Contact). The Record of Contact shall collect the required data elements (see below). After completion, such Record of Contact shall be filed in the OGS procurement record.

If the Contact (attempt to influence) falls outside of the specific Permissible Subject Matter Communication category, the Contact shall be deemed a possibly Impermissible Contact and the OGS staff shall refer it for review and investigation in accordance with the OGS process for review and investigation.

8. A Contact (attempt to influence) to OGS staff that is not the Designated Contact(s) or within a Permissible Subject Matter Communication category for a procurement shall be recorded and filed in the procurement record. Such Contact (attempt to influence) shall be deemed a possibly Impermissible Contact and it shall be referred for review and investigation in accordance with OGS process (see below).

9. OGS shall undertake its procurements consistent with the applicable statutory requirements and free from conduct that would be violative of the Public Officers Law.

10. OGS staff may consult the model guidelines developed by the Advisory Council on Procurement Lobbying when implementing this section. Questions on statutory interpretation shall be referred to OGS Legal Services.

11. OGS staff shall incorporate a summary of this policy and prohibitions on Permissible Contacts in all of its solicitation documents.

12. OGS staff shall seek a written affirmation from each offerer that the offerer understands and agrees to comply with OGS's procedures regarding Permissible Contacts.

13. OGS staff shall incorporate and obtain a certification by the offerer that all information provided with respect to State Finance Law §139-k is complete, true and accurate.

14. OGS staff shall incorporate a specific question regarding prior non-responsibility determinations under State Finance Law §§139-j and 139-k into its solicitations.

15. OGS staff shall make a final determination regarding a proposed awardee's responsibility for purposes of State Finance Law §§ 139-j and 139-k. OGS staff shall consult with such non-responsibility and debarment list when assessing the responsibility of an offerer. Based on information provided, OGS shall also determine if an offerer fails to timely disclose accurate or complete information when making the responsibility determination pursuant to State Finance Law §139-k. OGS staff shall not award a procurement contract to a non-responsible offerer unless certain statutory conditions are established in the procurement record.

16. Upon any Contact (attempt to influence) in the Restricted Period, OGS staff shall complete a Record of Contact obtaining specific information. Such recorded Contact (attempt to influence) shall be included in the procurement record, and referred for review and investigation, as applicable. Information to be obtained:

- Name of Person and Organization
- Address
- Telephone Number
- Place of Principal Employment

- Occupation
- Record Whether the Person/Organization Making the Contact was the Offerer or was Retained, Employed or Designated by or on behalf of the Offerer to appear before or contact the Governmental Procurement.

17. It is OGS' policy that its staff shall promptly complete the Record of Contact and forward such record to the appropriate individual for inclusion in the procurement record and refer for review and investigation, as applicable.

18. If OGS staff becomes aware that an offerer has violated the requirements about Permissible Contacts, such staff shall immediately notify the OGS Ethics Officer. The OGS Ethics Officer shall investigate such allegation in accordance with OGS process, affording the offerer due process. If it is determined that an offerer has knowingly and willfully violated the restrictions on Permissible Contacts, OGS staff shall not award such offerer the contract (unless special circumstances exist) and shall notify OGS Legal Services that a non-responsibility determination was made. OGS Legal Services staff shall have the non-responsibility information placed on the appropriate list maintained on the internet. If there is a second non-responsibility determination under this section by any Governmental Entity, OGS Legal Services shall place such offerer on the debarment list.

For additional information, please contact Legal Services at 518-474-5607. *Note: The OGS Ethics Officer is the Deputy Commissioner and Counsel.*

For additional information on this policy, please see the links below:

[OGS Process for Review and Investigation in accordance with State Finance Law §139-j\(8\), \(9\) and \(10\)](#)

Advisory Council on Procurement Lobbying at <http://www.ogs.ny.gov/ACPL>. A copy of the statutes, a summary of the policy and its prohibitions, model language for inclusion in solicitations and forms to be included for compliance with State Finance Law §§139-j and 139-k are found here.